

**RESOLUTION NO. 2014-109**

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA GRANTING AN AGREEMENT FOR PROCESSING RECYCLABLE MATERIALS TO PROGRESSIVE WASTE SOLUTIONS OF FL, INC. AS THE QUALIFIED, RESPONSIVE AND RESPONSIBLE BIDDER PROVIDING THE MOST ECONOMIC VALUE TO THE CITY PURSUANT TO INVITATION TO BID NO. 2013-2014-9500-00-011 FOR THE PROCESSING, MARKETING AND SALE OF THE CITY'S RECYCLABLE MATERIALS COLLECTED, FOR AN INTIAL TERM OF FIVE YEARS, ON TERMS AND CONDITIONS SET FORTH IN THE AGREEMENT, AS PUBLISHED IN THE INVITATION TO BID, AND AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY OF HIALEAH, TO EXECUTE THE AGREEMENT, A COPY OF WHICH IS ATTACHED HERETO AS "EXHIBIT 1".

**WHEREAS**, the City sought competitive bids in response to an invitation to bid for the processing, marketing and sale of the City's recyclable materials; and

**WHEREAS**, an advisory committee composed of three staff members evaluated all responses received in accord with the requirements in the solicitation to select the qualified, responsive and responsible bidder providing the most economic value to the City; and

**WHEREAS**, the selection committee recommended the contract be awarded to Progressive Waste Solutions of FL, Inc. pursuant the report of the committee dated September 4, 2014, the content of which is incorporated herein by reference in its entirety; and

**WHEREAS**, the findings of the selection committee are hereby adopted;

**WHEREAS**, it is in the best interest and welfare of the residents of the City of Hialeah to award the contract to Progressive Waste Solutions of FL, Inc. in accord with the recommendation of the selection committee;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

**Section 1:** The foregoing facts and recitations contained in the preamble to this resolution are hereby adopted and incorporated by reference as if fully set forth herein.


**Section 2:** The City of Hialeah, Florida hereby grants Progressive Waste Solutions of FL, Inc. an agreement for the processing of recyclable materials for an initial term of five (5) years on terms and conditions set forth in the Agreement for Processing Recyclable Materials as published in Invitation to Bid No. 2013-2014-9500-00-011 for Recyclable Materials Processing Services as the qualified, responsive and responsible bidder providing the most economic value to the City and hereby authorizes the Mayor and the City Clerk, as attesting witness, on behalf of the City of Hialeah, to execute the Agreement, a copy of which is attached as "Exhibit 1".

PASSED and ADOPTED this 09 day of September, 2014.

  
\_\_\_\_\_  
Isis Garcia-Martinez  
Council President


Attest:

Approved on this 11 day of September, 2014.

  
\_\_\_\_\_  
Marbelys Fatjo, City Clerk

  
\_\_\_\_\_  
Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

  
\_\_\_\_\_  
Lorena E. Bravo, Acting City Attorney

Resolution was adopted by a 5-0-2 vote with Council Members Casáls-Muñoz, García-Martínez, González, Hernández, & Lozano voting "Yes", & Councilmembers Caragol and Cue-Fuente absent.

AGREEMENT FOR PROCESSING

RECYCLABLE MATERIALS

BETWEEN

CITY OF HIALEAH, FLORIDA

AND

XYZ COMPANY [CONTRACTOR]



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## AGREEMENT FOR PROCESSING RECYCLABLE MATERIALS

This Agreement for Processing Recyclable Materials ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2014 ("Effective Date"), by and between the City of Hialeah, Florida, a municipal corporation of the State of Florida ("City") and \_\_\_\_\_ XYZ Company ("Contractor").

### RECITALS

WHEREAS, the City collects Recyclable Materials ("Recyclables") from the residents in the City; and

WHEREAS, the City wishes to manage the City's Recyclables in a manner that is efficient, lawful, environmentally-sound, and financially beneficial; and

WHEREAS, the City issued an invitation to bid ("ITB" or "Solicitation") that solicited bids from any qualified Person wishing to Process, market, and sell the City's Recyclables; and

WHEREAS, the Contractor submitted a bid in response to the City's Solicitation (ITB No. 2013-14-0500-00-011); and

WHEREAS, the City has relied upon the information provided by the Contractor concerning the Contractor's experience and ability to provide the services requested by the City; and

WHEREAS, the City has concluded that the Contractor's bid is responsive to the City's Solicitation and it provides the best overall value for the City; and

WHEREAS, the City and the Contractor wish to enter into this Agreement concerning the Recyclables Processing services that the Contractor will provide to the City; and

WHEREAS, the City has concluded that entering into this Agreement is beneficial, in the best interests of the public, and in compliance with the City's Ordinances.

NOW, THEREFORE, in consideration of the mutual covenants, promises, terms and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, Contractor and the City do hereby agree to comply with and be bound by the following provisions of this Agreement:

### SECTION 1. EFFECTIVE DATE, COMMENCEMENT DATE, AND TERM

- A. Effective Date and Commencement Date. The Effective Date of this Agreement is the date when this Agreement is duly executed and signed by the City, which shall occur after the Agreement is duly executed and signed by the Contractor. The Commencement Date is the date when the Contractor shall begin to provide the services required pursuant to this Agreement.
- B. Initial Term. This Agreement shall be in effect and binding upon the Parties from the Effective Date until this Agreement terminates or expires. The initial term of this Agreement shall be a

five (5) year period, beginning on the Commencement Date, unless this Agreement is terminated earlier or extended in accordance with the provisions contained herein.

- C. Renewal Option. At the option of the City and with the concurrence of the Contractor, this Agreement may be renewed multiple times, but the total duration of the renewal terms shall not exceed five (5) years. Each renewal shall be subject to the prior approval of the City Council.

## SECTION 2. DEFINITIONS

The words and phrases used in this Agreement shall be defined in the manner provided in this Section 2. If a word or phrase is not defined herein, the word or phrase shall be defined in the manner provided in the City's Ordinances.

Agreement means this "Agreement For Processing Recyclable Materials," including all of the exhibits and amendments hereto.

Applicable Law means any local, state or federal statute, law, constitution, charter, ordinance, judgment, order, decree, permit, rule, regulation, directive, policy, standard or similar binding authority, or a judicial or administrative interpretation of any of the same, which are in effect or are enacted, adopted, promulgated, issued or enforced by a governmental agency or authority during the term of this Agreement, and relate or apply in any manner to the performance of the City or Contractor under this Agreement.

Average Market Value or AMV means a market index used to determine the amount of revenue that will be paid by the Contractor to the City for the Program Materials delivered to the Designated Recycling Facility, based on the monthly values paid in the commodity market for Recyclables. The specific method for calculating the AMV is set forth in Section 6, below.

Biomedical Waste means any waste that may cause disease or reasonably be suspected of harboring pathogenic organisms, including waste resulting from the operation of medical clinics (veterinary or otherwise), hospitals (veterinary or otherwise), and other facilities processing waste that may consist of, but are not limited to, human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, sharps, contaminated clothing, and surgical gloves.

City means, depending on the context, either (a) the geographic area contained within the municipal boundaries of the City of Hialeah, Florida or (b) the government of the City, acting through the City Council or its designees.

City Vehicle means a truck or other motor vehicle that delivers Recyclable Materials to the Designated Recycling Facility and is owned and operated by the City or a Contract Hauler.

Commencement Date means the date when the Contractor shall begin to provide its services to the City pursuant to this Agreement. The Commencement Date shall be September 1, 2014, or any other date that is mutually acceptable to the City and the Contractor.

Contract Hauler means any Person that has entered into a franchise agreement or other contract with the City to collect or transport Recyclables for the City.

Contract Year means (a) with regard to the first Contract Year, the twelve (12) consecutive month period beginning on the Commencement Date and (b) with regard to subsequent Contract Years, each twelve (12) consecutive month period thereafter.

Contractor means the Person that shall provide the services required pursuant to this Agreement. The Contractor is \_\_\_\_\_ [XYZ Company].

Council means the City Council of the City of Hialeah, Florida, or its designee.

Designated Processing Facility means the facility designated in this Agreement where the Contractor will Process the City's Program Materials. The Designated Processing Facility may be the same as or different than the Designated Recycling Facility.

Designated Recycling Facility means the facility designated in this Agreement where the Contractor will receive and accept delivery of the City's Program Materials. The Designated Recycling Facility may be a materials recovery facility, a recovered materials processing facility, or a transfer station, as those terms are defined in Rule 62-701.200, Florida Administrative Code.

Director means the Director of the City's Public Works Department or the Director's designee.

Effective Date means the date when this Agreement is signed and duly executed by the City, which shall occur after the Agreement is signed and duly executed by the Contractor.

FDEP means the Florida Department of Environmental Protection and any successor agency or Governmental Authority.

Force Majeure Event means an act, event, or condition that (a) directly, substantially, and adversely affects the City's or the Contractor's ability or cost to perform in compliance with the requirements in this Agreement, (b) is beyond the reasonable control of the Person affected by the Force Majeure Event, and (c) is not due to any negligence or lack of planning or diligence by the Person affected by the Force Majeure Event. However, a Force Majeure Event does not include a change in a tax law, a labor strike or labor difficulty, changing economic conditions, or an economic hardship.

Governmental Authority means any federal, state, or local governmental, regulatory or administrative agency, authority, or commission or any court, tribunal, or judicial or arbitral body.

Hazardous Waste means any Solid Waste present in quantities or concentrations that are defined and regulated as a "hazardous waste" by the Florida Department of Environmental Protection.

Holiday means a designated date on which the Contractor is not be required to provide its services under this Agreement. For the purposes of this Agreement, the only Holidays are Christmas Day and other days that are approved as Holidays by the Director.

Household Hazardous Waste or HHW means a waste that is produced in a home and contains hazardous substances in concentrations that pose a threat to human health. HHW includes: ammonia; ammunition; anti-freeze, fluids, and batteries for automobiles; batteries, oil, and fluids for boats; charcoal lighter fluid; compact fluorescent bulbs; drain cleaners; fertilizers; fire extinguishers; fireworks; flares; fluorescent tubes; gasoline; herbicides; household cleaners; insecticides; kerosene;



lawn chemicals; lighter fluid; mercury thermometers; motor oil; nail polish remover; paint; pesticides; photographic chemicals; pool chemicals; propane tanks; rechargeable batteries; rust remover; solvents; spot remover; tires; turpentine; weed killer; wood stains; wood stripper; and other items that are designated as HHW with the mutual consent of the City and Contractor.

Load means the Recyclables and other materials delivered to the Designated Recycling Facility in a City Vehicle.

Ordinances means the ordinances included in the City's code of ordinances.

Parties means the City and the Contractor.

Party means, depending on the context, either the City or the Contractor.

Permit means any permit, license, authorization, or other governmental approval required for the Contractor's work under this Agreement.

Person means any and all persons and entities, natural or artificial, including any individual, firm, partnership, joint venture, or other association, however organized; any municipal or private corporation organized or existing under the laws of the State of Florida or any other state; any county or municipality; and any Governmental Authority.

Processing, Processed, and other variations of the verb "to Process" mean any technique designed to change the physical, chemical, or biological character or composition of any Solid Waste so as to render it: safe for transport; amenable to recovery, storage, or recycling; safe for disposal; or reduced in volume or in concentration.

Program Materials means Recyclable Materials collected by or on behalf of the City and over which the City has control. Recyclable Materials include newspapers (including inserts), corrugated cardboard, mixed paper (including brown paper bags, magazines, phonebooks, junk mail, white and colored paper, shredded paper in a bag, and paperboard), aluminum cans, plastic containers and bottles marked with SPI codes 1-7, glass bottles and jars, tin and ferrous cans, polycoated cartons, and other materials designated as Program Materials by mutual agreement of the City and Contractor.

Public Records Law means Chapter 119 of the Florida Statutes.

Recovered Materials means Recyclable Materials that have been separated from the Solid Waste stream and Processed to market specifications.

Recyclable Materials or Recyclables means those materials that are capable of being recycled and which would otherwise be Processed or disposed of as Solid Waste.

Rejects means materials, other than Residue, that cannot be recycled and cannot be Processed into Recovered Materials.

Residue means the portion of the Recyclable Materials accepted by the Contractor that is not converted to Recovered Materials due to breakage and/or Processing inefficiencies at the Designated Processing Facility.

Single Stream means a recycling Process in which the generator (e.g., a resident) places all of the different types of Recyclable Materials together in a bin or cart for collection by the City or its Contract Hauler (if any). In a Single Stream system, all of the Recyclables are commingled together; the generator and the hauler are not required to separate the Recyclables into two or more containers.

Solid Waste means garbage, rubbish, refuse, trash, and other similar discarded materials resulting from domestic, commercial, industrial, agricultural, or governmental operations. Solid Waste does not include Recyclable Materials, Unacceptable Waste, or Solid Waste that is not controlled by the City.

Ton means 2,000 pounds.

Transfer Station means a facility that is primarily used to store or hold Solid Waste prior to transport to a Processing or disposal facility. The operations at a Transfer Station may include the separation of incidental amounts of Recyclable Materials or Unacceptable Waste.

Unacceptable Waste means Biomedical Waste, Hazardous Waste, sludge, automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines, lead-acid batteries, used oil, tires, and those wastes under the control of the Nuclear Regulatory Commission.

Work Day means any calendar day, except Sundays and Holidays.

### **SECTION 3. RESERVED**

### **SECTION 4. CONTRACTOR'S RECYCLABLES PROCESSING RESPONSIBILITIES**

#### **A. Designated Facilities**

- (1) The following facility is the Designated Recycling Facility at which Program Materials will be received by the Contractor pursuant to this Agreement, beginning on the Commencement Date: \_\_\_\_\_, located at \_\_\_\_\_ Street, \_\_\_\_\_ City, Florida, or such other facility that is approved in writing by the Director.
- (2) The following facility is the Designated Processing Facility at which Program Materials will be Processed pursuant to this Agreement, beginning on the Commencement Date: \_\_\_\_\_, located at \_\_\_\_\_ Street, \_\_\_\_\_ City, Florida, or such other facility that is approved in writing by the Director.
- (3) The Designated Recycling Facility and Designated Processing Facility may be changed only with the prior written approval of the Director.

- (4) The Contractor shall be solely responsible for all aspects of the design, permitting, financing, construction, management, staffing, operation, closure, and maintenance of the Designated Recycling Facility and Designated Processing Facility.
- (5) The Contractor shall ensure that the Designated Recycling Facility and Designated Processing Facility are operated at all times in compliance with all Applicable Law.
- (6) The City shall have the right, but not the duty, to inspect and observe the operating and maintenance practices at the Designated Recycling Facility and Designated Processing Facility. Among other things, the City may observe the receipt, separation, Processing, loading, storage, and transport of the materials received at each facility. The City may inspect and observe these facilities at any time during the Contractor's normal hours of operation, as specified in Section 4.B(2), below. The Contractor shall accommodate the City's inspections, but may require the City to comply with reasonable safety requirements.

B. Materials Acceptance

- (1) Beginning on the Commencement Date, to the extent allowed by law, the City shall deliver and direct the Contract Hauler (if any) to deliver the City's Program Materials to the Designated Recycling Facility during the days and hours specified in Section 4.B(2), below. The City's Program Materials may be collected and delivered to the Designated Recycling Facility in a Single Stream. The City provides no warranties or guarantees regarding the quantity, quality, or characteristics of the Program Materials that will be delivered to the Designated Recycling Facility.
- (2) Beginning on the Commencement Date, the Contractor shall accept deliveries of the City's Program Materials at the Designated Recycling Facility between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday, and 6:00 a.m. and 4:00 p.m. on Saturday, or other hours approved in writing by the Director. At the Contractor's option, the Designated Recycling Facility may be closed on Holidays. No reduction in the scheduled receiving hours shall be made without the prior written approval of the Director.
- (3) The City shall have the right to designate other types of Recyclable Materials as Program Materials, if the Parties agree it is technically feasible and cost-effective to Process such Recyclable Materials.
- (4) The Designated Recycling Facility shall be operated in a manner that facilitates the easy and rapid ingress and egress of City Vehicles. The Contractor shall use all reasonable measures to ensure that the average turnaround time for City Vehicles does not exceed twenty (20) minutes. The average turnaround time shall be determined on a daily basis. The turnaround time shall be measured from the time when a City Vehicle enters the queue at the entrance to the Designated Recycling Facility and it shall include all of the time until the City Vehicle leaves the facility site. However, the turnaround time shall not include delays caused by (a) equipment failures that are not the result of the Contractor's negligence, (b) the negligent actions of the City's drivers or the Contract Hauler, or (c) the breakdown of City Vehicles. Within one (1) Working Day after

receiving the City's request, the Contractor shall provide the City with access to the Contractor's records concerning the turnaround times for the City Vehicles.

- (5) The Designated Recycling Facility shall be equipped with truck scales and computerized recordkeeping systems for weighing and recording the delivery of the City's Program Materials. The Contractor shall calibrate and certify the accuracy of the scales at least once each calendar quarter.
- (6) The Contractor shall weigh each City Vehicle that delivers Program Materials to the Designated Recycling Facility. The Contractor's records shall identify the gross weight of each City Vehicle, the weight of the Load delivered in each City Vehicle, the date when the City Vehicle delivered the Load, and the times when the City Vehicle entered and left the facility site. The Contractor shall record and keep this information in a manner that allows the Contractor to provide reports concerning the City's Program Materials as required herein or reasonably requested by the City. The Contractor may use tare weights. If the Contractor chooses to use tare weights, all tare weights shall be recalibrated at least once every sixty (60) calendar days.
- (7) If Hazardous Waste is found within a Load of Program Materials delivered to the Designated Recycling Facility in a City Vehicle, the Contractor shall immediately: (a) take photographs of the Hazardous Waste; (b) take photographs of the truck that delivered the waste to the Designated Recycling Facility; (c) take photographs of the truck number; (d) record the truck driver's name and pertinent information concerning the source of the Hazardous Waste, if known; and (e) notify the Director. The Contractor shall properly isolate, containerize, and dispose of the Hazardous Waste in accordance with Applicable Law. The Contractor shall have the burden of demonstrating that the Hazardous Waste was delivered to the Designated Recycling Facility in a City Vehicle. The City shall reimburse the Contractor for all reasonable, documented, out-of-pocket expenses the Contractor incurs for the management and disposal of Hazardous Waste that was delivered to the Designated Recycling Facility in a City Vehicle.
- (8) In the event the Contractor fails, refuses, or is unable to accept part or all of the City's Program Materials on the Commencement Date or anytime thereafter during the term of this Agreement, the Contractor shall be liable for all hauling, Processing, transportation, disposal, and other related charges and costs that the City incurs with regard to marketing, recycling, and/or disposing of such materials. Among other things, the Contractor shall pay the City for any deficit the City incurs if the revenue from the sale of Program Materials is less than the revenue the City would have received if the Contractor had accepted the Program Materials when they were delivered to the Designated Recycling Facility.

C. Transport, Processing, Marketing, and Disposal

- (1) Upon acceptance of Program Materials at the Designated Recycling Facility, the Contractor shall bear all costs associated with Processing or transporting Program Materials and marketing and transporting Recovered Materials. The Contractor is

responsible for all costs of transporting and disposing non-recyclable materials, including Rejects and Residue, resulting from the Processing of Program Materials.

- (2) Unless the Contractor has received the prior written permission of the Director, the Contractor shall not dispose of Program Materials or Recovered Materials resulting from the Processing of Program Materials. Such prior written permission from the City is not required for any type of Recyclable Material or Recovered Material that has an AMV of zero (\$0.00) or less, as determined in compliance with Section 6, below.
- (3) With regard to Program Materials or Recovered Materials obtained from Program Materials, the Contractor shall not knowingly provide such materials to a Person that will place such materials in a landfill, burn such materials in a waste-to-energy facility, or otherwise dispose of such materials, except as provided in 4.C(2), above. The Contractor shall not knowingly, or without reasonable investigation, sell Program Materials or Recovered Materials resulting from processing of Program Materials to another Person that will dispose of such material.
- (4) The requirements in Sections 4.C(2) and (3) do not apply to Rejects and Residue.

D. Record Keeping

- (1) The Contractor shall create, maintain, and make available all of the records required herein, as well as any records required under Applicable Law. The Contractor shall create, maintain, and make available to the City all of the records reasonably necessary to demonstrate that the Contractor has performed all of its work under this Agreement in compliance with the requirements contained herein.
- (2) The Contractor shall create and maintain records identifying the amount of Program Materials that were delivered to the Designated Recycling Facility by the City and its Contract Hauler (if any). The Contractor's records shall clearly distinguish between the Program Materials delivered by or on behalf of the City and the materials delivered by other Persons.
- (3) The Contractor shall maintain its records in an organized, up-to-date manner, in accordance with generally accepted management principles and practices. The City shall have access to the Contractor's books, records, and documents for inspection, review, and copying in Dade County during normal business hours, within five (5) Working Days after the City requests such records. The Contractor will provide appropriate facilities for conducting such inspection.
- (4) The Florida Public Records Law may be applicable to the Contractor's records or documents pertaining to this Agreement. Contractor agrees to comply with all Applicable Laws, including the applicable provisions (if any) of Section 119.0701, Florida Statutes.
- (5) The Contractor will maintain and allow access to the books, records, data, documents, and reports relating to this Agreement in accordance with the records retention

requirements set forth in Florida law or for five (5) years after this Agreement expires or terminates, whichever is later.

E. Reporting

- (1) Prior to the fifteenth (15<sup>th</sup>) calendar day of each month during the term of this Agreement, the Contractor shall submit a report electronically to the Director, in a format approved by the Director. The report shall identify the total tonnage of Program Materials delivered to the Designated Recycling Facility by the City and its Contract Hauler during the previous month. The report shall contain a breakdown of such deliveries by delivery date and time, vehicle number, and quantity per vehicle.
- (2) Within thirty (30) days after the end of each Contract Year, the Contractor shall provide the Director with a report summarizing the total Tons of Program Materials delivered to the Designated Facility by the City and its Contract Hauler during the Contract Year and the net tonnage diverted from disposal. Additionally, the Contractor shall provide the City with a copy of the Contractor's annual report to FDEP, summarizing the Recyclable Materials deliveries by type, quantity, and source. The report shall be provided to the City within seven (7) days after the report is submitted to FDEP.
- (3) At least fifteen (15) days prior to the end of each Contract Year during the term of this Agreement, the Contractor shall ensure and certify to the City that all required documents are current and on file with the City. Such documents include, but are not limited to, certificates of insurance and the performance bond.

F. Public Education and Information

- (1) The Contractor shall, at no cost to the City, provide an educational presentation concerning the Designated Recycling Facility at two (2) events per Contract Year, if such presentations are requested by the City.
- (2) The Contractor shall, at no cost to the City, provide tours of the Designated Recycling Facility and Designated Processing Facility for the benefit of the City and its invitees/guests. The City shall provide the Contractor at least ten (10) calendar days advance notice of such tours. The Contractor shall provide personnel (bilingual upon request) to lead the tour and the Contractor shall provide all necessary personal safety equipment. Prior to conducting any tours, the City and the Contractor shall jointly designate the areas where tour-group participants can safely observe the operations of the facility.

**SECTION 5. RESERVED**

**SECTION 6. REVENUE AND PAYMENT FOR RECYCLABLES**

A. Program Materials Revenue

- (1) The Contractor shall pay the City monthly for each Ton of Program Materials delivered to the Designated Recycling Facility, as determined by the Designated Recycling Facility's

scales. The payment per Ton shall be calculated as follows and as described in Exhibits 1, 2, and 3:

- (a) Each month, the Contractor shall calculate the Average Market Value (AMV) of the Program Materials, defined as the sum of the Southeast USA regional average commodity prices (U.S. Dollars per Ton) first posted in the month for which payment is being made in RecyclingMarkets.net, multiplied by the composition percentages identified in Exhibit 2. If at any time during the term of this Agreement RecyclingMarkets.net no longer posts or otherwise fails to provide the applicable market indices, then the parties shall mutually select an appropriate replacement source for the required information from among the sources recycling industry professionals utilize to obtain reliable Recovered Material pricing information.
  - (b) A Contractor's Fee of Fifty Dollars (\$50.00) per Ton shall be deducted from the AMV. This fee shall be adjusted as specified in Section 6.A.(2).
  - (c) The Contractor shall pay the City a percentage, as provided in Exhibit 1, of the remaining amount, for each Ton of Program Materials delivered to the Designated Recycling Facility during that month. The percentage payable to the City is \_\_\_\_\_ percent (\_\_\_\_%) of the AMV (net of Contractor's Fee).
  - (d) If the AMV is less than the Contractor's Fee, the Contractor shall make no payment to the City. At no time shall the City make payment to the Contractor for accepting, Processing, or marketing Program Materials, regardless of the AMV.
- (2) The Contractor's Fee of Fifty Dollars (\$50.00) per Ton shall remain unchanged through the first Contract Year. On June 1, 2015 and each subsequent June 1 during the term of the Agreement, the Contractor's Fee shall be adjusted based on seventy-five percent (75%) of the percentage change in the Consumer Price Index (CPI) between the month of March in the previous year and the month of March in the current year, rounded to the nearest tenth. The CPI will be the Consumer Price Index for the South Urban Region, All Items – All Urban Wage Earners and Clerical Workers, (series ID #CWURO300SA0) published by the United States Department of Labor, Department of Labor Statistics. Notwithstanding anything else contained herein, the total adjustment to the Contractor's Fee in any given year shall not exceed three percent (3%) of the Contractor's Fee in the previous year. If the CPI is discontinued or substantially altered, the City may select another relevant price index published by the United States Government or by a reputable publisher of financial and economic indices.
- (3) At any time, the City or Contractor may conduct a composition study of the Program Materials delivered to the Designated Recycling Facility. The Party requesting such study shall pay for the study unless otherwise agreed upon. The final methodology for the study, and the selection of a qualified Person to conduct the study, must be approved by the City. The City reserves the right to have a representative onsite throughout the composition study. Study results are subject to final approval by the City, which shall not be unreasonably withheld. If approved by the City, adjustments to the composition percentages provided in Exhibit 2 shall be made and shall become effective for the

following month and the remainder of the Agreement or until further adjusted as the result of a future composition study.

- (4) In May 2014, the City conducted a composition study concerning the Program Materials. At that time, the City used garbage cans to collect garbage and it used wheeled carts to collect Program Material. If the City uses wheeled carts to collect garbage in the future, the composition of the Program Materials may change significantly. Accordingly, the City and the Contractor shall conduct a new composition study within ninety (90) days after the City's residents receive garbage carts or at any other time that is mutually acceptable to the City and the Contractor. The requirements in Section 6.A.(3) shall apply to the new composition study; however, the cost of the composition study shall be shared equally (50% - 50%) by the City and the Contractor.
- (5) The Contractor acknowledges and accepts that the formula outlined in this Section 6.A shall be used for calculating the Contractor's revenue throughout the term of this Agreement. The formula is intended to reflect the current value of Program Materials, but might not be an exact calculation of that value. If the commodity revenue received by the Contractor differs from the market index, or if the Contractor's Fee does not accurately reflect the Contractor's cost for accepting, Processing, and marketing Program Materials, the Contractor shall not be entitled to other payments or revenues from the City, because the Contractor has taken such items into consideration when establishing the percentage of the AMV (less the Contractor's Fee) that the Contractor will pay to the City. Any and all costs associated with accepting, Processing, marketing, and transporting Program Materials shall be the sole responsibility of the Contractor.

B. Invoicing and Payment

- (1) No later than the fifteenth (15<sup>th</sup>) day of each month, the Contractor shall submit a monthly report, in a form acceptable to the City, detailing the total revenue due to the City for the Program Materials delivered to the Designated Recycling Facility during the previous month. The report shall be sent to the following address:

City of Hialeah  
Public Works Department  
Attn: Director  
3700 West 4<sup>th</sup> Street  
Hialeah, FL 33012

- (2) The Contractor shall remit payment of said revenue, as detailed in the monthly report, within thirty (30) calendar days after the end of the month for which the payment is due. Payment shall be delivered to the following:

City of Hialeah  
Public Works Department  
Attn: Director  
3700 West 4<sup>th</sup> Street  
Hialeah, FL 33012



## SECTION 7. CHANGE IN LAW

The Contractor may petition the City for a rate adjustment based on a change in law that directly, significantly, and adversely affects Contractor's cost of providing its services under this Agreement. The Contractor's request shall contain substantial proof and justification to support the need for the rate adjustment. The City may request from the Contractor such further information as may be reasonably necessary in making the City's determination. Within sixty (60) calendar days of receipt of the request and all other additional information required by the City, the Director shall make a determination regarding the fairness of the request, and shall make a recommendation to the City Council. The City Council shall consider the request at a regular meeting. The City Council may grant or deny the Contractor's request, in the Council's sole discretion. If the City Council approves the request, adjusted rates shall become effective upon execution of a written amendment to the Agreement.

## SECTION 8. LIQUIDATED DAMAGES

- A. Assessment of Liquidated Damages. The City and Contractor recognize and agree that certain events may cause the City to suffer losses or damages that are by their nature uncertain, difficult to prove, and not ascertainable at the time the Agreement is entered into. The parties agree that certain breaches will cause Contractor to pay liquidated damages without any proof of the actual damage resulting from the breach. In no event shall these liquidated damages be construed or deemed to constitute penalties. The Director (or the Director's designee) may assess such liquidated damages pursuant to this Section 8 on a monthly basis in connection with this Agreement and shall, at the end of each month during the term of this Agreement, notify the Contractor in writing of the liquidated damages assessed and the basis for each assessment. In the event the Contractor wishes to contest such assessment, it may request in writing a meeting with the Director to resolve the issue. The Director shall notify the Contractor in writing of any action taken with respect to Contractor's claims. The Director's decision shall be final and conclusive unless determined by a court of competent jurisdiction to be fraudulent, capricious, arbitrary, so grossly erroneous as to necessarily imply bad faith, or not supported by competent evidence.
- B. Liquidated Damages for Recyclables Processing Service. The City may assess liquidated damages against the Contractor for failing to provide Processing services in compliance with the requirements of this Agreement. It is hereby agreed that the City may demand immediate payment from the Contractor, and the Contractor shall pay, for liquidated damages, and not as a penalty, in the following amounts:
- |   |                             |
|---|-----------------------------|
| 1. Failure to accept Recyclable Materials during scheduled receiving hours (Section 4.B(2))                             | \$500 per unaccepted Load   |
| 2. Failure to provide a daily average delivery vehicle turnaround time that does not exceed 20 minutes (Section 4.B(4)) | \$500 per day               |
| 3. Disposing of Recyclable Materials or Recovered Materials without prior approval of the Director (Section 4.C.)       | \$1,000 per occurrence      |
| 4. Failure to submit timely records and reports (Section 4.E.)  | \$100 per calendar day late |

5. Failure to make timely payment to the City (Section 6.B.) \$100 per calendar day late

## **SECTION 9. EMERGENCY SERVICE PROVISIONS**

In the event of a hurricane, tornado, major storm, natural disaster, or other such event, the Director may grant the Contractor a variance from regular service. However, Contractor shall make its best effort to resume regular service as soon as possible, and shall resume regular service no later than the date when the City or the City's Contract Hauler (if any) resumes the collection of Program Materials. As soon as practicable after such event, the Contractor shall advise the Director when it is anticipated that normal service can be resumed.

## **SECTION 10. PERFORMANCE BOND**

- A. Prior to the Commencement Date, the Contractor shall furnish to the City a Performance Bond for the faithful performance of this Agreement and all obligations arising hereunder. The Contractor shall keep the Performance Bond current and in effect at all times throughout the term of this Agreement and any renewal terms. The Performance Bond shall be in the amount of Fifty Thousand Dollars (\$50,000).
- B. The Performance Bond shall be executed by a surety company: licensed to do business in the State of Florida; having an "A X" or better rating by A.M. Best or Standard and Poors; included on the list of surety companies approved by the Treasurer of the United States; and in a form acceptable to the City.

## **SECTION 11. INSURANCE**

- 11.1 Policy limits. Contractor shall not commence performance under this Agreement until Contractor has obtained all of the insurance required under this Section 11 and Certificates of Insurance reflecting the required insurance have been filed with the Director.

Contractor shall maintain insurance with minimum policy limits for each coverage as scheduled below, with such coverage per occurrence, single limit, and commencing prior to the commencement of the work under this Agreement, and continuing to provide coverage for claims based on occurrences during the initial term and any renewal term of this Agreement (except for Pollution Liability, which may be provided on a claims made basis) for a minimum of three years after the date of termination or expiration of this Agreement:

<i>Commercial General Liability</i>	<i>\$1,000,000/\$2,000,000</i>
<i>Contractual Liability</i>	<i>\$1,000,000/\$2,000,000</i>
<i>Commercial Automobile Liability</i>	<i>\$1,000,000 Per occurrence</i>
<i>Pollution Liability</i>	<i>\$1,000,000/\$2,000,000</i>
<i>Worker's Compensation</i>	<i>Statutory Amount</i>

*Employer's Liability*

*\$1,000,000*

*Umbrella Liability*

*\$5,000,000*

The Commercial General Liability insurance and the Contractual Liability insurance shall have dedicated limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate for bodily injury and property damage. This coverage shall also include personal and advertising injury, medical payments, and completed operations. The Commercial Automobile Liability insurance shall have a minimum limit of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate and shall cover any automobile or other vehicle, including non-owned, hired, or leased vehicles. The Worker's Compensation insurance shall comply with the requirements and statutory limits established by the State of Florida. The Employer's Liability insurance shall have a minimum limit of One Million Dollars (\$1,000,000) per accident for bodily injury or disease.

- 11.2 City as additional insured. The City shall be named as an additional insured on all insurance policies required under this Agreement, except Workers Compensation. All Insurance Policies shall be endorsed to provide that (a) Contractor's insurance is primary and non-contributory to any other insurance available to the City or any other additional insured with respect to claims covered under the policy and (b) Contractor's insurance applies separately to each insured against whom claims are made or suit is brought, and (c) the inclusion of more than one insured shall not operate to increase the Insurer's limit of liability. Without the City's prior written approval, self-insurance by Contractor shall not be acceptable as providing any of the insurance coverages required in this Agreement. The Contractor's Certificate of Insurance must identify the City's Solicitation number and title (Recyclable Materials Processing Services; ITB No. 2013-14-9500-00-001).
- 11.3 Insurance company standards. Policies required under this Agreement shall be issued by companies authorized to do business under the laws of the State of Florida, with minimum ratings from A.M. Best Company of A or better, and FSC X or better.
- 11.4 Notice of cancellation. Contractor agrees to furnish City at least thirty (30) days prior written notice of any cancellation of any insurance policy required under this Agreement. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then Contractor shall furnish, at least ten (10) days prior to the expiration date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. Contractor shall not continue to work pursuant to this Agreement unless all required insurance remains in full force and effect.
- 11.5 Minimum level of umbrella coverage. To ensure an adequate level of outstanding insurance coverage for claims that arise from Contractor's performance under this Agreement, Contractor shall maintain a minimum outstanding level of umbrella insurance coverage during the term of this Agreement in the amount of Five Million Dollars (\$5,000,000) after deducting the amount of any claims filed or made against any policy required under this Agreement. Such coverage shall be maintained at all times during the term of this Agreement and the three (3) year period following the term of this Agreement.

- 11.6 Premium payment responsibility. Contractor shall be solely responsible for payment of all premiums for insurance contributing to the satisfaction of this Agreement and shall be solely responsible for the payment of all deductibles and retentions to which such policies are subject. Contractor shall ensure that any company issuing insurance to satisfy the requirements contained in this Agreement, agrees that they shall have no recourse against City for payment or assessments in any form on any policy of insurance.
- 11.7 Claims made policies. If Contractor's insurance policy is a "claims-made" policy, then Contractor shall maintain such insurance coverage for a period of five (5) years after the expiration or termination of this Agreement or any extensions or renewals of this Agreement. Applicable coverages may be met by keeping the policies in force, or by obtaining an extension of coverage commonly known as a reporting endorsement of tail coverage.
- 11.8 If any of Contractor's insurance policies includes a general aggregate limit and provides that claims investigation or legal defense costs are included in the general aggregate limit, the general aggregate limit that is required shall be at least five (5) times the occurrence limits specified in this Section 11.
- 11.9 The official title of the owner is the City of Hialeah. This official title shall be used in all insurance policies and documentation.
- 11.10 All required insurance policies shall preclude any insurer's or underwriter's rights of recovery or subrogation against the City, with the express intention of the Parties being that the required insurance coverage protects both Parties as the primary coverage for any and all losses covered by the above-described insurance.
- 11.11 The clauses "Other Insurance Provisions" and "Insured Duties in the Event of an Occurrence, Claim or Suit" as it appears in any policy of insurance in which City is named as an additional named insured shall not apply to the City in any respect. The City shall use its best efforts to provide written notice of occurrence within thirty (30) Working Days after City's actual notice of such event.
- 11.12 Notwithstanding any other provisions of this Agreement, Contractor's obligation to maintain all required insurance as specified in this Section 11 of the Agreement shall survive the expiration and termination of this Agreement.

## **SECTION 12. INDEMNIFICATION OF CITY**

- A. Contractor shall indemnify, defend, and hold harmless City, City's contractors, and the public officials, officers, directors, employees, agents, and other contractors of each of them, from and against any and all claims, which shall include but not be limited to any and all costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals as well as all court or other dispute resolution costs), liabilities, expenditures or causes of action of any kind (including negligent, reckless, willful or intentional acts or omissions of the Contractor, any subcontractor, any supplier, any Person or organization directly or indirectly employed by any of them to perform or furnish any services or anyone for whose acts any of them may be liable), caused by the Contractor's breach of this Agreement,

the Contractor's violation of Applicable Law, or the negligent acts or omissions of the Contractor in the performance of this Agreement. This indemnity includes but is not limited to claims attributable to bodily injury, sickness, disease or death and to injury or destruction of tangible property. Further, the Contractor's indemnity includes all claims based on, arising out of, or related to (1) the payment of fees, royalties, or costs for any invention or patent rights or for the infringement of any copyrights or patents claimed by any Person, (2) the City's decision to award this Agreement to the Contractor, and (3) the Contractor's refusal to produce documents under the Public Records Law.

- B. Contractor agrees, at Contractor's expense, after written notice from the City, to defend any action against the City that falls within the scope of the indemnity set forth above in Section 12.A, or the City, at the City's option, may elect instead to secure its own attorneys to defend any such action and the reasonable costs and expenses of such attorneys incurred in defending such action shall be payable by Contractor. Additionally, if Contractor, after receipt of written notice from the City, fails to make any payment due under this Agreement to the City or fails to perform an obligation required by this Agreement, Contractor shall pay any reasonable attorneys' fees and costs incurred by the City in securing any such payment from Contractor, or any reasonable attorneys' fees and costs incurred in the enforcement of this indemnity, or both. Payment of any amount due pursuant to the foregoing indemnity shall, after receipt of written notice by Contractor from the City that such amount is due, be made by Contractor prior to the City being required to pay same, or in the alternative, the City, at the City's option, may make payment of an amount so due and Contractor shall promptly reimburse the City for same, together with interest thereon at the rate of twelve percent (12%) per annum simple interest from the date of receipt by Contractor of written notice from the City that such payment is past due at least twenty (20) days.
- C. It is specifically understood and agreed that the consideration inuring to the Contractor for the execution of this Agreement includes the promises, payments, covenants, rights, and responsibilities contained in this Agreement.
- D. The execution of this Agreement by the Contractor shall obligate the Contractor to comply with the foregoing indemnification provision; however, the collateral obligation of providing insurance must be also complied with, as set forth in Section 11, above.
- E. The Contractor shall require each of its subcontractors to enter into a contract containing the provisions set forth in the preceding subsections and shall require the subcontractors to fully indemnify the City in accordance with this Agreement.

### **SECTION 13. POINT OF CONTACT**

The day-to-day dealings between the Contractor and the City shall be between the Contractor and the Director or the Director's designee.

### **SECTION 14. NOTICE**

Except as otherwise expressly provided herein, whenever either party desires to give notice to the other, it must be given by written notice with hand delivery or sent by certified U.S. mail, with return

receipt requested, addressed to the Party for whom it is intended, at the place last specified and to the place for giving of notice in compliance with the provisions of this Section 14. For the present, the Parties designate the following as the respective Persons and places for giving of notice:

As to the City:

Director of Public Works Department  
City of Hialeah  
3700 West 4<sup>th</sup> Street  
Hialeah, FL 33012

With a copy to:

Lorena Bravo, City Attorney  
City of Hialeah  
501 Palm Avenue  
Hialeah, FL 33010

As to the Contractor:

With a copy to:

Notices shall be effective when received at the address specified above. Changes in the respective addresses to which such notice is to be directed may be made from time-to-time by written notice.

#### **SECTION 15. TERMINATION OF CONTRACT**

A. Termination for Cause. The City may cancel this Agreement, except as otherwise provided below in this Section 15, by giving the Contractor fifteen (15) days advance written notice, to be served as provided in Section 14, upon the happening of any one of the following events:

- (1) The Contractor shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors or file a voluntary petition in bankruptcy (court) or a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or any state thereof or consent to the

appointment of a receiver, trustee or liquidator of all or substantially all of its property;  
or

- (2) By order or decree of a court, the Contractor shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of the stockholders of the Contractor, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any state thereof, provided that if any such judgment or order is stayed or vacated within sixty (60) days after the entry thereof, any notice of default shall be and become null, void and of no effect, unless such stayed judgment or order is reinstated, in which case, said default shall be deemed immediate; or
- (3) By, or pursuant to or under the authority of any legislative act, resolution or rule or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver trustee or liquidator shall take possession or control of all or substantially all of the property of the Contractor, and such possession or control shall continue in effect for a period of sixty (60) days; or
- (4) The Contractor has defaulted by failing or refusing to pay in a timely manner the liquidated damages or other monies due the City and said default is not cured within fifteen (15) days of receipt of written notice by City to do so; or
- (5) The Contractor has defaulted by allowing any final judgment for the payment of money to stand against it unsatisfied and said default is not cured within fifteen (15) days of receipt of written notice by City to do so; or
- (6) The Contractor has defaulted, by failing or refusing to perform or observe the terms, conditions or covenants in this Agreement or any of the rules and regulations promulgated by the City pursuant to this Agreement or has wrongfully failed or refused to comply with the instructions of the Director relative thereto and said default is not cured within fifteen (15) days of receipt of written notice by the City to do so, or if by reason of the nature of such default, the same cannot be remedied within fifteen (15) days following receipt by the Contractor of written demand from the City to do so, the Contractor fails to commence the remedy of such default within said fifteen (15) days following such written notice or having so commenced shall fail thereafter to continue with diligence the curing thereof (with the Contractor having the burden of proof to demonstrate that (a) the default cannot be cured within fifteen (15) days, (b) it is proceeding with diligence to cure said default, and (c) such default will be cured within a reasonable period of time). However, notwithstanding anything contained herein to the contrary, if the Contractor is unable for any reason or cause to resume performance at the end of thirty (30) calendar days, all liability of the City under this Agreement to the Contractor shall cease and this Agreement may be deemed terminated by the City.

In the event that the monies due the City under subsection (4) above or an unsatisfied final judgment under subsection (5) above is the subject of a judicial proceeding, the Contractor shall not be in default if the sum of money is bonded. All bonds shall be in the form acceptable to the City Attorney.

- B. Habitual Violations. Notwithstanding the foregoing and as supplemental and additional means of terminating this Agreement under this Section 15, in the event that the Contractor's record of performance shows that the Contractor has frequently, regularly or repetitively defaulted in the performance of any of the covenants and conditions required herein to be kept and performed by the Contractor, and regardless of whether the Contractor has corrected each individual condition of default, the Contractor shall be deemed a "habitual violator," shall be deemed to have waived the right to any further notice or grace period to correct, and all of said defaults shall be considered cumulative and collectively and shall constitute a condition of irredeemable default. The City shall thereupon issue the Contractor a final warning citing the circumstances therefore, and any single default by the Contractor of whatever nature, subsequent to the occurrence of the last of said cumulative defaults, shall be grounds for immediate termination of this Agreement. In the event of any such subsequent default, the City may terminate this Agreement upon giving of written final notice to the Contractor, such cancellation to be effective upon the date specified in the City's written notice to the Contractor, and all contractual fees due hereunder plus any and all charges and interest shall be payable to said date, and the Contractor shall have no further rights hereunder. Immediately upon the specified date in such final notice, the Contractor shall cease any further performance under this Agreement.
- C. Termination Without Cause. In addition to and notwithstanding any other provisions of this Agreement, this Agreement may be terminated by the City for convenience, without cause, upon providing the Contractor with ninety (90) days written notice.
- D. Effective Date of Termination. In the event of the aforesaid events specified in subsections 15.A, 15.B, and 15.C, above, and except as otherwise provided in said subsections, termination shall be effective upon the date specified in the City's written notice to the Contractor and upon said date this Agreement shall be deemed immediately terminated and upon such termination all liability of the City under this Agreement to the Contractor shall cease, and the City shall have the right to call the performance bond and shall be free to negotiate with other contractors for the services specified herein. The Contractor, for failure to perform, shall reimburse the City for all direct and indirect costs of obtaining interim service.

## **SECTION 16. MODIFICATIONS TO THE AGREEMENT**

The City shall have the power to make changes in this Agreement as the result of changes in law, the City Code, or both, and to impose new rules and regulations on the Contractor under this Agreement relative to the scope and methods of providing the service specified herein as shall from time-to-time be necessary and desirable for the public welfare. The City shall give the Contractor notice of any proposed change and an opportunity to be heard concerning those matters. If a change is required as a result of an amendment to the City's Code, upon receipt of the proposed change, Contractor shall have ten (10) business days to either accept the change or to terminate this Agreement by providing the City with ninety (90) days written notice of termination. Failure to provide the City with written notice of termination shall constitute acceptance of the proposed change. The scope and method of providing service as referenced herein shall also be liberally construed to include, but they are not limited to, the manner, procedures, operations and obligations, financial or otherwise, of the Contractor.



The City and the Contractor understand and agree that the Florida Legislature has the authority to make comprehensive changes in Solid Waste management legislation and that these and other changes in law in the future which mandate certain actions or programs for counties or municipalities may require changes or modifications in some of the terms, conditions or obligations under this Agreement. The Contractor agrees that the terms and provisions of any City Code of the City related to Solid Waste services and regulations, as it now exists or as it may be amended in the future as a result of any changes in the law, shall apply to all of the provisions of this Agreement. In the event any future change in the City Code materially alters the obligations of the Contractor, then the fee established in the exhibits to this Agreement shall be adjusted. Nothing contained in this Agreement shall require any Party to perform any act or function contrary to law. The City and Contractor agree to enter into good faith negotiations regarding modifications to this Agreement which may be required in order to implement changes in the interest of the public welfare or due to change in law. When such modifications are made to this Agreement, the City and the Contractor shall negotiate in good faith a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required of the Contractor due to any modification in the Agreement under this Section 16. The City and the Contractor shall not unreasonably delay or withhold agreement to such compensation adjustment.

#### **SECTION 17. PERMITS AND LICENSES**

The Contractor shall obtain, at its own expense, all permits and licenses required by Applicable Law and shall maintain same in full force and effect at all times during the term of this Agreement.

#### **SECTION 18. INDEPENDENCE OF AGREEMENT**

It is understood and agreed that nothing herein is intended or should be construed as in any way establishing the relationship of co-partners or a joint venture between the Parties hereto or as constituting the Contractor as an agent, representative or employee of the City for any purpose whatsoever. The Contractor is to be, and shall remain, an independent contractor with respect to all services performed under this Agreement.

#### **SECTION 19. FORCE MAJEURE**

If either Party is prevented from or delayed in performing its duties under this Agreement by a Force Majeure Event, including, without limitation, fires, hurricanes, severe weather, floods, pandemics, quarantines, war, civil disturbances, acts of terrorism, labor disputes, acts of God, or material changes in any Applicable Law, or acts of any Governmental Authority, then the affected Party shall be excused from performance hereunder during the period of such disability. The Party seeking relief as a result of a Force Majeure Event shall promptly notify the other Party in writing when it learns of the existence of a Force Majeure Event and when the Force Majeure Event has terminated. Notwithstanding anything in this Agreement to the contrary: (a) the term "Force Majeure Event" does not include, and a Party shall not be excused from performance under this Agreement for, events relating to increased costs or changing economic conditions, including, without limitation, increased costs of fuel, labor, insurance, or other expenses of performing the services hereunder; and (b) a Force Majeure Event shall not be grounds for a delay or failure to satisfy a Party's payment obligations under this Agreement. If a Force Majeure Event will prevent the Contractor from satisfying its obligations under this Agreement for more

than thirty (30) calendar days, the City may terminate this Agreement after providing five (5) Work Days written notice.

#### **SECTION 20. EMPLOYEE STATUS**

The City shall have no obligation to pay or provide for the Contractor's employees. A Person employed by the Contractor in the performance of services and functions pursuant to this Agreement shall have no claim to any rights or benefits provided by the City to the City's employees (e.g., pension, workers' compensation, unemployment compensation, civil service or other employee rights or privileges granted to the City's officers and employees).

#### **SECTION 21. EQUAL OPPORTUNITY EMPLOYMENT**

Contractor shall comply with all federal, state and local laws applicable to the Contractor's services, specifically including those covering Equal Opportunity Employment, the Americans with Disabilities Act ("ADA"), and the South Florida Building Code. The Contractor is expected to fully comply with all provisions of all Applicable Laws and the City reserves the right, but not the obligation, to verify the Contractor's compliance with them. Failure to comply with any Applicable Laws will be grounds for termination of this Agreement for cause.

#### **SECTION 22. CONTRACTOR'S WARRANTIES**

The Contractor warrants that all work, materials, services and equipment that may reasonably be inferred from this Agreement as being required to produce the intended result, will be supplied by the Contractor at its own cost, whether or not specifically identified and required in this Agreement.

The Contractor warrants and agrees that all work, materials, services and equipment necessitated by the inspections of City agencies or other regulatory agencies, in order to bring the Contractor's work into compliance with this Agreement and all Applicable Laws, shall be the responsibility of the Contractor and shall be provided at no additional cost to the City.

#### **SECTION 23. RIGHT TO REQUIRE PERFORMANCE**

The failure of the City at any time to require performance by the Contractor of any provision hereof shall in no way affect the right of the City thereafter to enforce same, nor shall waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself. To be effective, any waiver shall be in writing and signed by the Party granting such waiver. Any waiver shall be limited to the particular right so waived and shall not be deemed to waive any other right under this Agreement.

#### **SECTION 24. GOVERNING LAW**

The Parties agree that this Agreement shall be construed in accordance with and governed by the laws of the State of Florida.

#### **SECTION 25. CONSENT TO JURISDICTION AND VENUE; WAIVER OF JURY TRIAL**

Any claim, objection or dispute arising out of the terms of this Agreement shall be litigated exclusively in the state and federal courts in and for Dade County, Florida. THE PARTIES EXPRESSLY, VOLUNTARILY, AND IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY FOR ANY DISPUTES ARISING FROM OR IN ANY WAY CONNECTED WITH THIS AGREEMENT. The Parties understand and agree that this waiver is a material term of this Agreement.

#### **SECTION 26. LITIGATION**

In the event of any litigation which arises out of, pertains to, or relates to this Agreement, or the breach of it, including, but not limited to, the standard of performance required in it, the Parties shall each pay their own attorneys' fees, costs, and expenses at trial and all appellate levels.

#### **SECTION 27. COMPLIANCE WITH LAWS**

The Contractor shall conduct its operations under this Agreement in compliance with all applicable federal, state and local laws and regulations.

#### **SECTION 28. SEVERABILITY**

If any provision of this Agreement or the application of it to any Person or situation shall to any extent be held invalid or unenforceable, the remainder of this Agreement and the application of such provisions to Persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected, shall continue in full force and effect, and shall be enforced to the fullest extent permitted by law.

#### **SECTION 29. ASSIGNMENT AND SUBLETTING**

No assignment of this Agreement or any right occurring under this Agreement shall be made in whole or in part by the Contractor without the express written consent of the City. The City shall have full discretion to approve or deny, with or without cause, any proposed or actual assignment by the Contractor. Any assignment of this Agreement made by the Contractor without the express written consent of the City shall be null and void and shall be grounds for the City to declare a default of this Agreement and immediately terminate this Agreement by giving written notice to the Contractor, and upon the date of such notice this Agreement shall be deemed immediately terminated, and upon such termination all liability of the City under this Agreement to the Contractor shall cease, and the City shall have the right to call the performance bond and shall be free to negotiate with other contractors, or any other Person or company for the service which is the subject of this Agreement. In the event any assignment is approved by the City, the assignee shall fully assume all the liabilities of the Contractor.

#### **SECTION 30. MODIFICATIONS**

This Agreement constitutes the entire Agreement and understanding between the Parties, and it shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the Parties hereto.

### **SECTION 31. CONSTRUCTION OF AGREEMENT**

- A. Both Parties are represented by legal counsel and they hereby waive any rule of law that would require any doubtful or ambiguous provisions contained herein to be construed against the Party that physically prepared this Agreement. The rule sometimes referred to as "Fortius Contra Proferentum" shall not be applied to the interpretation of this Agreement. The Parties agree that this Agreement shall not be construed more strictly against one Party than against the other merely because one Party prepared the document.
- B. In this Agreement, the words "include" and "including" shall be deemed to be followed by the phrase "without limitation." References to included matters or items shall be regarded as illustrative only and shall not be interpreted as a limitation on or an exclusive listing of the matters or items referred to.
- C. All of the citations herein to the Florida Statutes shall mean and refer to the Florida Statutes as they exist on the Effective Date.

### **SECTION 32. FUND APPROPRIATION**

The Contractor understands and agrees that the City, during any fiscal year, is not authorized to expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year and that any contract, verbal or written, made in violation of these prohibitions is null and void and that consequently, no money may be paid on such contract beyond such limits. Nothing contained in this Agreement shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executed only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Contractor shall not proceed with services under this Agreement without City's written verification that the funds necessary for Contractor's compensation and other necessary expenditures are budgeted as available within the appropriate fiscal year budget. The City does not represent that said budget item will be adopted, such determination being the prerogative of the City Council at the time of the adoption of the budget.

### **SECTION 33. PUBLIC ENTITY CRIME**

Contractor understands that a Person or affiliate as defined in Section 287.133, Florida Statutes, who has been placed on the convicted vendor list maintained by the Florida Department of Management Services following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to the City and may not transact business with the City in an amount set forth in Section 287.017, Florida Statutes, for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Contractor herein certifies that it is qualified under Section 287.133, Florida Statutes, to provide the services set forth in this Agreement.

### **SECTION 34. FINANCIAL INTEREST**

Contractor warrants and represents that: (a) no elected official, officer, agent or employee of the City has a financial interest, directly or indirectly, in this Agreement or the compensation to be paid under it;

(b) no Person who acts in the City as a "purchasing agent" as defined in Chapter 112, Florida Statutes, nor any elected or appointed officer of the City, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, is a partner, officer, director or proprietor of the Contractor; and (c) no such Person, purchasing agent, City elected or appointed officer, or the spouse or child of any of them, alone or in combination, has a material interest in the Contractor. Material interest means direct or indirect ownership of more than five percent (5%) of the total assets or capital stock of the Contractor.

#### **SECTION 35. ALL PRIOR AGREEMENTS SUPERSEDED**

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained in this Agreement. The Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of this Agreement shall be predicated upon any prior representations or agreements, whether oral or written.

#### **SECTION 36. AUDIT AND INSPECTION RIGHTS AND RETENTION OF RECORDS**

City shall have the right to audit the books, records and accounts of Contractor that are related to this Agreement during normal business hours. Contractor shall keep such books, records, and accounts reasonably required to document and substantiate Contractor's performance under this Agreement, including, but not limited to, records concerning calibration of the motor truck scales and the monthly reports required under Section 4, above.

Contractor shall preserve and make available at reasonable times for examination and audit by City, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period established by the Florida Public Records Law, if applicable or a minimum period of five (5) years after termination of this Agreement, whichever is longer, unless Contractor is notified in writing by the City of the need to extend the retention period. The retention of such records and documents shall be at Contractor's expense. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or five (5) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Law is determined by City to be applicable to Contractor's records, Contractor shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Contractor. Any incomplete or incorrect entry in the Contractor's books, records, and accounts shall be a basis for disallowance and recovery of any payment based upon such entry.

#### **SECTION 37. THIRD PARTY BENEFICIARIES**

Neither the City nor Contractor intends that any Person shall have a cause of action against either of them as a third party beneficiary under this Agreement. Therefore, the Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The Parties expressly acknowledge that it is not their intent to create any rights in any third person or entity under this Agreement.

#### **SECTION 38. PAYMENT DISPUTES**

If the City disagrees with any amount stated in any invoice from the Contractor, the City shall notify the Contractor of such dispute. The City shall make payment to Contractor of the undisputed invoiced amounts within thirty (30) days after receipt of the invoice. In the event of a disputed amount, the Parties shall reasonably attempt to discover the cause of any discrepancy between the Parties, and if a resolution is not reached within forty five (45) days of the City's notice of such dispute, the Parties shall resolve the dispute in any manner permitted by Florida law. The existence of a dispute shall not delay payment of undisputed amounts to Contractor, or relieve Contractor of any of its obligations to City under this Agreement.

#### **SECTION 39. PUBLIC RECORDS**

The Contractor shall comply with all of the requirements in the Florida Public Records Law that are applicable to the Contractor. Among other things, the Contractor shall comply with any applicable requirements in Section 119.0701, Florida Statutes.

#### **SECTION 40. MOST FAVORED PRICING AND MATERIAL TERMS**

In the event that Contractor subsequently enters into an agreement for a term of more than twelve (12) months (including renewal and option periods) for the Processing and/or recycling of another Governmental Authority's Recyclable Materials (or a private entity that provides the recycling for all or substantially all of the Recyclables generated within a Governmental Authority's jurisdiction) generated anywhere within Miami-Dade, Palm Beach, or Broward County (an "Eligible Agreement"), Contractor shall provide the City with a copy of the Eligible Agreement within sixty (60) days of execution thereof. If the City determines that the Eligible Agreement includes a recycling payment that is greater than the payment set forth herein for the City, the City may provide written notice to Contractor of City's determination and, if the City does so, the Program Recyclable payments to the City shall be increased to the amount set forth in the Eligible Agreement, and such change shall be effective retroactive to the effective date of the Eligible Agreement. Thereafter, the Parties shall proceed under this Agreement in accordance with the greater Recyclables payment.

#### **SECTION 41. HEADINGS**

Headings in this document are for convenience of reference only and are not to be considered in any interpretation of this Agreement.

#### **SECTION 42. EXHIBITS**

Each exhibit referred to in this Agreement forms an essential part of this Agreement. Each such exhibit is a part of this Agreement and is incorporated by this reference.

#### **SECTION 43. REPRESENTATIONS**

As an inducement to the City, Contractor represents and warrants that: (a) Contractor is duly organized and validly existing under the laws of the State of Florida, with full legal right and authority to enter into

and perform its obligations under this Agreement; and (b) Contractor is duly authorized to execute and deliver this Agreement without further approvals or authorizations.

#### **SECTION 44. REMEDIES NOT EXCLUSIVE**

The remedies specified in this Agreement shall supplement, and not be in lieu of, any other remedies provided at law or in equity. The payment of any liquidated damages by the Contractor shall not constitute a defense for the Contractor, nor an election of remedies by the City, nor serve as the basis for a claim of estoppel against the City, nor prevent the City from terminating this Agreement. The City's decision to refrain from assessing liquidated damages, or suspending or terminating this Agreement, or seeking any other relief from any failure in the Contractor's performance, shall not constitute a waiver of the City's right to pursue any other remedy or a waiver of its right to pursue a remedy for any future failure by the Contractor. No remedy conferred by this Agreement is intended to be exclusive of any other remedy. Each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No single or partial exercise by any Party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

#### **SECTION 45. SOVEREIGN IMMUNITY**

Nothing in this Agreement shall be interpreted or construed to mean that the City waives its common law sovereign immunity or the limits on liability set forth in Section 768.28, Florida Statutes.

IN WITNESS WHEREOF, the City and the Contractor have executed this Agreement on the respective date(s) below each signature.

City of Hialeah, Florida  
A municipal corporation

ATTEST:

By:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

(CITY SEAL)

Approved as to form and correctness:

\_\_\_\_\_  
City Attorney

Date: \_\_\_\_\_



**CONTRACTOR**

WITNESSES:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name and Title

\_\_\_\_ day of \_\_\_\_\_, 2014

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name and Title

\_\_\_\_ day of \_\_\_\_\_, 2013

ATTEST:

\_\_\_\_\_  
SECRETARY

(CORPORATE SEAL)

STATE OF FLORIDA     )  
                                  ) SS:  
COUNTY OF DADE     )

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared \_\_\_\_\_ [Name] as \_\_\_\_\_ [Title], of \_\_\_\_\_ [XYZ Corporation], an organization authorized to do business in the State of Florida, and acknowledged that he/she executed the foregoing Agreement as the proper official of \_\_\_\_\_ [XYZ Corporation] for the use and purposes mentioned in it and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal in the State and County aforesaid on this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

**EXHIBIT 1**

**CONTRACTOR'S PROGRAM MATERIALS REVENUE FORM**

Contractor submitted the attached Program Recyclables Revenue Form in response to the City's ITB No. 2013-14-9500-00-011, establishing the basis for the payments that will be made by the Contractor to the City pursuant to this Agreement.

## EXHIBIT 2

### INITIAL COMPOSITION OF PROGRAM MATERIALS AND CALCULATION OF AVERAGE MARKET VALUE

Material	Index Description	Index Value (Apr '14)	Index Value Per/Ton	Material %	Average Market Value (\$/Ton)
Newspaper	PS 8 baled, F.O.B. seller's dock	\$ 70.00	\$ 70.00	7.6%	\$5.32
Corrugated containers	PS II baled, F.O.B. seller's dock	\$ 120.00	\$ 120.00	10.8%	\$12.96
Mixed paper	PS I baled, F.O.B. seller's dock	\$ 52.50	\$ 52.50	12.3%	\$6.46
Steel cans	\$/Ton, sorted, baled and delivered	\$ 115.00	\$ 115.00	3.6%	\$4.14
Aluminum cans	Cents/lb, sorted, baled and delivered	\$ 74.50	\$1,490.00	0.5%	\$7.45
Plastics #3-7	Commingled (#3-7, cents/lb, baled and picked up)	\$ 1.25	\$ 25.00	2.8%	\$0.70
PET	Cents/lb, baled and picked up	\$ 20.75	\$ 415.00	3.9%	\$16.19
Natural HDPE	Cents/lb, baled and picked up	\$ 42.00	\$ 840.00	2.3%	\$19.32
Colored HDPE	Cents/lb, baled and picked up	\$ 31.50	\$ 630.00	2.3%	\$14.49
Glass (3 Mix)	\$/Ton, delivered	\$ (10.00)	\$ (10.00)	22.6%	(\$2.26)
Polycoated Cartons	None at this time	-	-	0.4%	\$0.00
Contamination	N/A	-	-	30.9%	\$0.00
<b>Total:</b>				100%	\$84.76

Note: The index values for April 2014 are used for estimation purposes only, and are subject to fluctuation as determined by Secondary Fibers and Material Pricing found on RecyclingMarkets.net. Prices to be used are the first published Regional Average prices for the Southeast USA in the month for which payment is being made. No market index currently exists for polycoated cartons in RecyclingMarkets.net; therefore, the value is set at zero (\$0.00). When a market index for polycoated cartons or aseptic containers becomes available on RecyclingMarkets.net, it will be utilized.

### EXHIBIT 3

#### SAMPLE CALCULATIONS OF MONTHLY PAYMENTS TO CITY

When making payments based on the AMV, the Contractor shall calculate the amount of the Contractor's monthly payments to the City by using the following formula:

$$CP = (AMV - SF) \times (RS) \times PM$$

Where:

CP = Contractor's Payment to the City

AMV = Average Market Value, measured in dollars per Ton, for one  
Ton of Program Materials

SF = Service Fee

RS = the revenue share for the City, expressed as a percentage

PM = the total amount of Program Materials, measured in Tons,  
delivered to the Contractor during the prior month

#### Example 1

Assume the following hypothetical values:

AMV = \$124.00 per Ton

Service Fee = \$50.00 per Ton

Revenue Share = 45%

PM = 750 Tons

Calculation:  $CP = (\$124.00 - \$50.00) \times 45\% \times 750 \text{ Tons}$

$CP = \$74.00 \times 0.45 \times 750 \text{ Tons}$

$CP = \$33.30 \times 750 \text{ Tons}$

$CP = \$24,975.00$

In this hypothetical example, the Contractor's payment to the City shall be \$24,975.

#### Example 2

Assume the following hypothetical values:

AMV = \$172.00 per Ton

Service Fee = \$50.00 per Ton

Revenue Share = 40%

PM = 750 Tons

Calculation:  $CP = (\$172.00 - \$50.00) \times 40\% \times 750 \text{ Tons}$

$CP = \$122.00 \times 0.40 \times 750 \text{ Tons}$

$CP = \$48.80 \times 750 \text{ Tons}$

$CP = \$36,600.00$

In this hypothetical example, the Contractor's payment to the City will be \$36,600.

#### Example 3

Assume the following hypothetical values:

AMV = \$46.00 per Ton\*

Service Fee = \$50.00 per Ton\*

Revenue Share = 40%

PM = 750 Tons

\*If the AMV is less than the Service Fee, the AMV is assumed to be zero and there is no payment to the City.

Calculation:  $CP = (\$46.00 - \$50.00^*) \times 40\% \times 750 \text{ Tons}$

$CP = (\$0.00) \times 0.40 \times 750 \text{ Tons}$

$$CP = \$0.00$$

As shown in this hypothetical calculation, when the Service Fee is greater than the AMV, the Contractor's payment to the City ("CP") is zero (\$0.00), and the Contractor retains all of the revenue derived from the sale of the Program Material.